IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.8.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.572 of 2007

Poongavanam .. Petitioner

Vs

1. State, rep. by its Secretary
   to Government,
   Prohibition and Excise Department,
   Secretariat, Chennai-9.

2. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai 600 080. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

O R D E R
(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, who is the daughter of detenue, Rajamma @ Vellai Rajamma, who was incarcerated by order dated 24.3.2007 of the second respondent under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding her as a Bootlegger, has preferred this petition for issue of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 24.3.2007 in Memo No.122/BDFGISSV/2007 against the petitioner's mother, Rajamma @ Vellai Rajamma, wife of Kannan, now confined at Central Prison, Special Cell for

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Women, Puzhal, Chennai, to set aside the same and to direct the respondents to produce the above said detenue before this Court and set her at liberty.

2. On 27.2.2007 at 9.00 hours, the Inspector of Police, Prohibition Enforcement Wing, Flower Bazaar Unit, along with police party, while conducting prohibition raid at P6 Kodungaiyur Police Station jurisdiction area, found three persons, one of them is the detenue herein, possessing a white colour plastic can and pouring some liquid in a plastic tumbler and giving to the persons standing in front of them. On seeing the police people, the persons who drank it ran away. The said three persons also tried to escape from that place, but they got caught by the police. A ten litre white colour can containing 2 litres of I.D. arrack and 750 numbers of 100 ml karnataka arrack duplicate sachets were recovered from the detenue. The detenue was arrested and a case was registered in Crime No.21 of 2007 on the file of PEW Flower Bazaar Unit under Sections 4(1)(i), 4(1)(aaa) and 4(1((A) of the Tamil Nadu Prohibition Act. Samples of I.D. arrack were taken and were sent for chemical analysis, which disclosed that the arrack was mixed with atropine of 8.3% mg w/v, which would be injurious and also fatal, if it not treated vigorously.

3. The second respondent, taking note of this case as a ground case and finding that there are five adverse cases pending against the detenue for the offences punishable under the Tamil Nadu Prohibition Act, and having satisfied that there is a compelling necessity to detain the detenue in order to prevent her from indulging in the activities which are prejudicial to the maintenance of public order and public health, ordered her detention dubbing her as a Bootlegger.

4. The learned counsel for the petitioner submits that even though the Inspector of Police in his letter dated 27.2.2007 (page 65-A of the booklet) made a request the the Court to forward three bottles of samples out of six bottles containing i.d. arrack for chemical analysis and the same is also evident from the remand report (page 74 of the booklet), the chemical analysis report dated 6.3.2007 (page 75 of the booklet) discloses that six bottles were sent for chemical analysis. The detaining authority had observed that the Inspector of Police forwarded only one sample bottle out of six bottles for chemical analysis, which would show that the detaining authority had not applied his mind while passing the order of detention and therefore, the same is vitiated.

5. We have perused the entire materials placed before us and we are satisfied that there is an error apparent on the face of the record, which would go to show that the detaining authority had not applied their mind before passing the order of detention.

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6. In view of the above, the impugned order of detention dated 24.3.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her presence is required in connection with any other case.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To:

1. The Secretary to Government,
   State of Tamilnadu,
   Prohibition and Excise Department,
   Secretariat, Chennai-9.

2. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai 600 080.

3. The Superintendent,
   Special Cell for Women,
   Puzhal, Chennai

4. The Public Prosecutor
   High Court, Madras.

5. The Secretary to Government of T.N
   Public (Law & Order) Department,
   Fort. St. George, Chennai.9.

+ 1 cc to Mr.s.Swamidoss Manokaran Advocate SR.NO.52586

NG(CO)
RD 4.9.07

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